Mid-Year Pay Increases of School District Employees  
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School districts frequently ask whether they can increase an employee’s compensation in the middle of the school year. This question may be related to an increase in annual salary, a one-time bonus, or additional pay for additional duties. In each of these situations, the answer depends on the facts. In some instances, the school board may be required to hold a public hearing in order to approve the increase.

**General Prohibition**

Special rules apply to the compensation of school district employees because they are paid with public funds. In two different sections, the Texas Constitution prohibits the legislature, counties, and municipal authorities from granting extra compensation to someone after service has been rendered or a contract has been entered into. Tex. Const. art. III, §§ 44, 53. The courts have decided that school districts are “municipal authorities” subject to these constitutional restrictions. *Harlingen Indep. Sch. Dist. v. C.H. Page & Bro.*, 48 S.W.2d 983 (Tex. Comm'n App. 1932).

These restriction have two complimentary components:

1. No extra compensation after services have been rendered (i.e., no retroactive increases); and
2. No extra compensation after a contract has been entered into (i.e., no prospective increases).

The purpose of these constitutional restrictions is to prevent payments of gratuities for services previously performed and to prohibit political subdivisions from “freely giving away the public moneys for services previously rendered or for which no valid legal authorization existed for which the public would receive no return.” Tex. Const. art. III, §§ 44, 53 interp. commentary (2007). In other words, once a person has provided services or agreed to provide services to a school district at a certain price, the district must have a legal reason for paying more than was bargained for.

**All Employment Relationships**

These constitutional restrictions apply to both at-will and contract employees, regardless of whether the employee is paid hourly or a salary.
If an at-will employee has performed work at a set hourly rate or salary, the district may not pay the employee more than that hourly rate or salary for work that has already been performed. The hourly rate for an at-will employee may be increased prospectively by board action at any time before the pay period in which the work begins.

Similarly, a district may not increase a contract employee’s salary for work that has already been performed under the contract. Unlike at-will employees, a contract employee’s compensation may not be increased prospectively unless permitted by law.

**Incentives and Performance Pay**

These restrictions do not prohibit tying compensation to performance as long as any raises were a term of employee compensation in place before the employee renders services. Tex. Att’y Gen. Op. No. GA-0368 (2005). This requires the employee’s contract to provide for the possibility of extra pay and for the plan or law providing for extra pay to exist at the time the contract is entered into.

For a school district to increase pay based on an incentive or performance-based pay plan, the employee’s contract must expressly provide for the possibility of such additional compensation. Tex. Att’y Gen. Op. No. GA-0204 (2004). Section 6.4 of the TASB model contracts provides for this possibility:

6.4 **Incentive and Performance Pay.** If you qualify, you may receive incentive pay or pay for performance under the District’s compensation plan, federal law, or state law. An incentive payment is not an entitlement as part of your salary.

Incentive or performance-based pay plans may be locally developed or authorized by state or federal law. Regardless of the nature of the plan, it must have been in place at the time the contract was entered into in order to make it a term of compensation that was established before the employee rendered services. Tex. Att’y Gen. Op. No. GA-0368 (2005). Similarly, if a law provides for extra compensation, it is considered incorporated into the contract if it existed at the time and place the contract was signed. Tex. Att’y Gen. Op. No. GA-0204 (2004).

**In Exchange for Extra Work**

additional work (i.e., work not already required under the employee’s contract), waiving leave rights, or agreeing to a longer contract term. Additional work will constitute new consideration only if the duties are not already required by existing contract or school district policy. Tex. Att’y Gen. Op. No. GA-0204 (2004).

**Bonuses**

A bonus or one-time annual payment is considered an increase to an already-established salary after services have been rendered. Tex. Att’y Gen. Op. No. JC-0376 (2001). Therefore, the constitutional prohibition on retroactive pay applies to bonus payments even if employees face an unforeseen increase in workload or the district receives a financial windfall. Tex. Att’y Gen. Op. No. KP-0361 (2021) (payment of one-time bonuses to county clerks who went “above and beyond” when the COVID-19 pandemic caused additional work was prohibited); Tex. Att’y Gen. Op. No. JM-1253 (1990) (drug seizure funds could not be used for bonuses unless the plan was approved as part of compensation before services were rendered).

However, similar to incentives and performance-pay plans, a bonus is permissible if it was in place before services were rendered. For example, a district’s compensation plan could authorize a holiday bonus in the event that certain conditions are met, such as a budget surplus. In this case, the bonus would not be extra compensation because it was a term of employee compensation in place before the employee rendered services. Tex. Att’y Gen. Op. No. GA-0368 (2005). These types of payments must be authorized through the budget adoption process.

**The “Missing Term” in Educator Contracts**

These constitutional restrictions do not prohibit the practice of setting teacher pay after the first duty day of the school year. Section 6.1 of the TASB model contracts provides that employees will be paid according to the compensation plan adopted by the board. In many districts, the board adopts the compensation plan as part of the budget process after work has begun for the school year. The attorney general has recognized that teachers have already agreed, by virtue of their contracts, to work each year under the salary annually approved by the district. Tex. Att’y Gen. Op. No. MW-0068 (1979).

Although salary is certainly an essential term in an employment contract, educator contracts are valid and effective when they are signed, even before a final determination has been made on the “missing term” of salary. After-the-fact salary increases for public employees do not violate the constitutional prohibition on paying more than is owed under the contract if the contract did not specify a salary term in advance. *Dallas County v. Lively*, 167 S.W. 219 (Tex. 1914). A valid contract can exist even when the payment term is left open because the law assumes the parties will set the term later in good faith. As a practical matter, districts set employees’ salaries when the board of trustees adopts the budget, then any increases apply retroactively to the beginning of the duty year. As a rule, retroactive adjustment of salaries is permissible only at the beginning of the school year, when salaries are first set.
Public Hearing for Payment in Excess of Amount Owed Under Contract

State law provides an additional prohibition against paying an employee more than an amount owed under a contract without first holding a public hearing, adding a potential procedural hurdle to increasing pay during a contract year. Texas Local Government Code section 180.007 requires political subdivisions, including school districts, to hold a public hearing before paying an employee or former employee more than an amount owed under a contract with the employee.

Since Section 180.007 was enacted, school officials have questioned whether a hearing is required under different circumstances. Assuming an employee’s contract provides for payment according to the compensation plan adopted by the board, it appears clear that a hearing is not required when the board increases compensation as part of the annual budget cycle. The statute is less clear about whether school districts must hold a public hearing if pay is increased at other times.

Legislative history indicates that Section 180.007 was intended to increase public awareness of instances when a public employer pays more to buy out an employee’s contract than the amount owed under the contract. As examples, legislators cited buyouts of superintendents and coaches that exceeded the face value of their contracts. *Hearings on Tex. H.B. 483 Before the House Comm. on Gov’t Efficiency and Reform*, 83rd Leg., R.S. (Mar. 18, 2013). All contract buyout negotiations are different, and attorneys may have differing opinions as to whether a public hearing is required in specific situations. In this and all aspects of a contract buyout, TASB Legal Services recommends that the district work closely with its school attorney for legal advice specific to the district’s situation.

The public hearing can be included on the agenda of a regular or special meeting of the board as long as notice of the hearing is posted in accordance with the Texas Open Meetings Act (OMA). An example of a sufficient agenda item would be: “Public hearing regarding increase in compensation to employee in accordance with Texas Local Government Code section 180.007.” If the employee receiving the payment is in a position of high public interest, the employee’s position should be listed.

If in doubt as to whether a hearing is legally required, school districts should err on the side of holding a hearing or consult with the district’s school attorney. Complying with the public hearing requirement is not complicated, and holding a hearing ensures that a political subdivision is not violating the constitutional prohibition on gifts of public funds. Tex. Const. art. III, §§ 51, 52(a), 53; art. XI §3; art. XVI § 6(a). At the public hearing, the board must state:

1. The reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose served by the excess payment; and
2. The exact amount of the excess payment, the source of the payment, the terms for distribution of the payment that effect and maintain the public purpose of the excess payment.

Tex. Loc. Gov’t Code § 180.007(c). Section 180.007 does not specifically require providing an opportunity for public comment; however, public testimony about the payment must be allowed before the board votes on the item, in accordance with the OMA. Tex. Gov’t Code § 551.007.

For further information, contact TASB Legal Services at 800.580.5345.